

REMARKS

Applicant respectfully requests reconsideration and allowance in view of the foregoing amendments and following remarks. In the Office Action, mailed June 14, 2005, the Examiner noted the allowability of claims 2-5, 8, 9, 12, 13, 15-18, 20, 21, 24 and 25, and rejected claims 1, 6, 7, 10, 11, 14, 19, 22, 23 and 79-92. By this amendment, claims 1, 6-7, 10-11, 14, 19, 22-23, 26-79 and 83-92 have been canceled, without prejudice, and claims 2, 4, 8-9, 12-13, 15, 17, 20-21, 24-25 and 80 have been amended. Following entry of this response, allowed claims 2-5, 8-9, 12-13, 15-18, 20-21, 24-25 and 80-82 will be pending in the application.

Claim Rejections under 35 U.S.C. § 112 (First Paragraph)

In the Office Action, the Examiner rejected claims 80-82 under 35 U.S.C. §112, first paragraph, for allegedly failing to comply with the enablement requirement. Applicant respectfully traverses the rejections of claims 5 and 7.

A rejection under 35 U.S.C. §112, first paragraph, is not appropriate when "those skilled in the art would understand what is claimed when the claim is read in light of the specification." Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565, 1576 (Fed. Cir. 1986). In the Office Action, the Examiner asserts that claims 80-82 contain subject matter that was not described in the specification in such a way as to enable one skilled in the art to make/use the invention. More specifically, the Examiner contends that the wherein clause of claim 80 (from which claims 81-82 depend) is not supported by the specification based on the Examiner's interpretation of the claim 80 wherein clause.

Applicant respectfully submits that the wherein clause of claim 80 is fully enabled by the specification. The Examiner has incorrectly read a limitation into claim 80 by assuming that the claimed "a group of symbols" and "another group of symbols" are parts (e.g., headers) of separate packets. There is no language in claim 80 (or independent claim 79, from which claim 80 depends) or the specification that requires, or even insinuates, this misinterpretation.

Rather, the wherein clause of claim 80 is supported and fully explained by, for example, Applicant's specification at page 8, lines 13-22. As the cited section explains, different transmitting nodes can have different capabilities, forcing them to employ different modes of

William McFarland
Serial No. 09/839,565
60412291v1

12

Amendment
073169-0269521 / ATH-025

transmission. This can, in turn, require the receiving node to quickly change its mode based on the arriving packet(s). One approach to facilitate the receiving node being able to quickly change its mode might be to have a short header on the packet (e.g., "a group of symbols") that would be in a base mode (e.g., first carriers/rate) that all nodes could receive and expect at the beginning of the packet. Within that short, base mode header would be an indication of which mode (e.g., second carriers/rate) the remainder of the packet (e.g., "another group of symbols") is being transmitted in. The receiver would then be able to quickly switch modes to receive the remainder of the packet. Thus, as Applicant's specification clearly explains, the claimed first and second carriers/rates, the group of symbols and the another group of symbols can, as illustrated, all be part of a single packet.

Therefore, those of ordinary skill in the art, in view of Applicant's specification, would be enabled to make and/or use Applicant's rejected claims 80-82. For at least the foregoing reasons, the §112, first paragraph, rejections of claims 80-82 should be withdrawn.

Claim Objections

In the Office Action, the Examiner objected to claims 2-5, 8-9, 12-13, 15-18, 20-21 and 24-25 as being dependent upon a rejected base claim. However, the Examiner noted that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant thanks the Examiner for noting the allowability of the subject matter contained in these claims.

Applicant has amended claims 2, 4, 8-9, 12-13, 15, 17, 20-21 and 24-25 to be rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 3, 5, 16 and 18 have not been amended because each now depends from an allowable, amended claim, specifically claims 2, 4, 15 and 17, respectively.

Therefore, for at least these reasons, Applicant respectfully requests withdrawal of the objections to claims 2-5, 8-9, 12-13, 15-18, 20-21 and 24-25.

Claim Rejections Under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 1, 6, 7, 14, 19, 79 and 83-92 under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 6,175,550 to van Nee

William McFarland
Serial No. 09/839,565
60412291v1

13

Amendment
073169-0269521 / ATH-025

(hereinafter "van Nee"). Applicant asserts that the Examiner's rejections to these claims have been rendered moot.

Applicant has canceled the Examiner's rejected claims 1, 6, 7, 14, 19, 79 and 83-92 and, as appropriate, incorporated the subject matter of these claims into the allowable dependent claims. Specifically, the subject matter of claim 1 is now part of amended claims 2 and 4; the subject matter of claim 6 is now part of amended claims 8 and 9; the subject matter of claim 14 is now part of amended claims 15, 17, 20 and 21; and the subject matter of claim 79 is now part of amended claim 80.

Therefore, for at least these reasons, Applicant respectfully requests withdrawal of the rejections to claims 1, 6, 7, 14, 19, 79 and 83-92.

Claim Rejections Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 10, 11, 22 and 23 under 35 U.S.C. §103(a) as allegedly being unpatentable over van Nee in view of U.S. Patent No. 6,276,297 to Uesugi (hereinafter "Uesugi"). Applicant asserts that the Examiner's rejections to these claims have been rendered moot.

Applicant has canceled the Examiner's rejected claims 10, 11, 22 and 23 and, as appropriate, incorporated the subject matter of these claims into the allowable dependent claims. Specifically, the subject matter of claim 11 is now part of amended claims 12 and 13; and the subject matter of claim 23 is now part of amended claims 24 and 25.

Therefore, for at least these reasons, Applicant respectfully requests withdrawal of the rejections to claims 10, 11, 22 and 23.

Conclusion

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition of allowance and a Notice to that effect is earnestly solicited. If any points remain in issue that the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

William McFarland
Serial No. 09/839,565
60412291v1

CHARGE STATEMENT: The Commissioner is hereby authorized to charge fees that may be required relative to this application, or credit any overpayment, to Deposit Account 03-3975, Order No. 073169-0269521.

Respectfully submitted,
PILLSBURY WINTHROP SHAW PITTMAN LLP
Customer No. 27,498

Date: 12 SEPT. 05



Ross L. Franks
(650) 233-4094
Please reply to customer no. 27,498

Reg. No.
47,233

William McFarland
Serial No. 09/839,565
60412291v1